IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21772 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI @ HANSLO RAMANBHAI GHODIA PATEL - Petitioner(s)

Versus

STATE OF GUJRAT & 2 - Respondent(s)

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Appearance :

MR HARNISH V DARJI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/01/2006

ORAL JUDGMENT

1. The petitioner has filed this petition challenging the order of detention dated 14.10.05 passed by Jilla Magistrate Navsari to detain the petitioner. When the matter was heard on 26.10.05

this Court has issued Rule returnable after four weeks. On behalf of the respondents Mr. Pujari appears he waives Rule on behalf of the respondents therefore with the consent of the parties the matter is taken up for final hearing. Mr. Darji learned advocate for the petitioner has invited my attention to the order of detention dated 14.10.05 passed by District Magistrate Navsari. He has also invited my attention to the order of detention and the petitioner was sent to District Jail at Palanpur and therefore he has also invited my attention to the grounds supplied to the petitioner dated 14.10.05 after referring to the grounds which has been stated that only one solitary incident which has been alleged against the petitioner namely the petitioner has committed offence under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985. He was termed as a bootlegger within the section of 2 (B) of the Act. It was alleged that the activity carried out by the petitioner will affect the public health and also the public order in this behalf.

2. On behalf of the learned advocate for the

petitioner it is stated that the order of detention is liable to be quashed and set aside and two grounds namely even if the petitioner is carrying on activities of dealing with liquor the authority is alleged in solitary incident and therefore there is no question of violation of public order in the case of **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491.** He has raised additional contention of solitary incident the subjective satisfaction of the authority is also vitiated and in support of the same he has relied upon the judgement of the Apex Court Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu & Others reported in AIR 2003 SC 971. He has relied upon the judgement of the Division Bench of this Court in the case of **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393.** He has further stated that the activity of the petitioner is dangerous to public health and the illegal country liquor has been examined either by chemical examiner or by FSL authority and the same is injurious to health.

3. Having heard learned counsel for the parties and

perused the record, in my opinion, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenu preferring bail application or his likelihood of getting enlarged on bail and subsequently continuing and indulging into such prejudicial, anti social and criminal activities again.

4. In view of the subjective satisfaction arrived by the authority is vitiated. The matter is covered by the judgement of Piyush Kantilal (supra) and Division Bench of this Court, and in the judgement of Ashok Jivraj and the same is covered by District Collector Anantpur (supra).

5. The petition is allowed. The order of detention dated 14/10/2005 is quashed and set aside. The detenue Asokbhai @ Hanslo Ramanbhai Ghodia Patel is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

6.Direct service is permitted.

(K.M.MEHTA, J)

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